

Attorney Docket No.: KBI-0016
Inventors: Ranganathan, Natarajan
Serial No.: 10/676,558
Filing Date: September 30, 2003
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REMARKS

Claims 1-4 are pending in the instant application. Claims 1-4 have been rejected. Claim 1 has been amended. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejection of Claims under 35 U.S.C. §102/§103

Claim 1 has been rejected under 35 U.S.C. 102(b) as being anticipated by Cajigas (U.S. Patent No. 5,145,697) or Morley (U.S. Patent No. 4,427,701). Claims 1-4 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cajigas or Morley. The Examiner suggests that Cajigas and Morley teach compositions comprising *Streptococcus thermophilus* and locust bean gum (an adsorbent). It is further suggested that while the cited references do not teach the claimed function and use of the compositions or the claimed strains of *Streptococcus thermophilus*, the intended use of the claimed composition and does not patentably distinguish the composition, per se, since such disclosed use is inherent in the reference composition and it would have been obvious to one of ordinary skill in the art to use any strain of *Streptococcus thermophilus*. Applicant respectfully disagrees with this rejection.

Cajigas teaches powdered yogurt formulations which can be reconstituted and Morley teaches frozen yogurt products. In contrast, the instant specification teaches a composition comprising *Streptococcus thermophilus* in combination with one or more adsorbents, wherein the composition is enteric coated or microencapsulated to facilitate delivery of the composition to the site of action in the gastrointestinal tract. See page 11,

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lines 5-18. Accordingly, to clarify the instant composition, Applicant has amended claim 1, as supported by the disclosure at page 11 (lines 5-18), to recite that the composition comprises a *Streptococcus thermophilus* probiotic bacterium and at least one adsorbent, wherein the composition is enteric coated or microencapsulated. As amended, the claims provide a more specific description of the instant composition (i.e., an enteric coated or microencapsulated composition) without changing the essential components of the composition already searched by the Examiner, namely a *Streptococcus thermophilus* probiotic bacterium and at least one adsorbent. Such a composition is neither taught nor suggested by the prior art references identified by the Examiner in a search of these essential components. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested in light of the relevant prior art identified.

II. Double Patenting

Claim 1-4 remain *provisionally* rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 5 and 13 of copending Application No. 10/803,211.

Claims 1-4 remain *provisionally* rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 8, 10 and 11 of copending Application No. 10/689,359.

Claim 1-4 remain *provisionally* rejected under the judicially created doctrine of obviousness type double patenting as being

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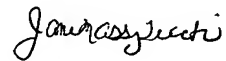
unpatentable over claims 1-2 of copending Application No. 10/936,262.

Applicant respectfully requests that these rejections be held in abeyance until allowable subject matter has been identified in copending Application Nos. 10/803,211; 10/689,359; and 10/936,262.

III. Conclusion

The Applicant believes that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



Jane Massey Licata
Registration No. 32,257

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Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515